



2. On June 12, 2020, the Court entered an order setting out deadlines.<sup>4</sup>
3. On October 5, 2020, the Parties filed an Agreed Motion to Extend Time<sup>5</sup> and on October 13, 2020, the Court entered an Amended Scheduling Order.<sup>6</sup>
4. On January 5, 2021, the Parties filed an Agreed Motion to Extend Time<sup>7</sup> and on January 14, 2021, the Court entered an Order<sup>8</sup> granting the Parties' motion and extending the deadline for Defendants to designate expert witnesses and provide expert reports until February 8, 2021 and the deadline for Plaintiff to designate expert witnesses and provide expert reports until March 8, 2021.
5. Pursuant to the Court Order, the Parties have timely designated expert witnesses and exchanged expert reports.
6. On March 31, 2021, Plaintiff sent a notice of deposition for Defendant's expert to take place on April 8, 2021. After Defendant's counsel consulted with his expert, Defendant informed Plaintiff that this deposition date was not available and that no dates were available for this expert during the week of April 5, 2021.
7. In addition, Defendant has recently advised Plaintiff that it will be amending its expert report this week to address the manner in which the easement impacts the valuation (in accord with the Yellow Book and as addressed by Plaintiff's expert).
8. In light of the above and pursuant to Fed. R. Civ. P. 16(b)(4), the Parties seek to modify the discovery deadline and all remaining deadlines in the Amended Scheduling Order<sup>9</sup>

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*Nat. Gas. Co. v. Sage*, 361 F.3d 808, 825 (4th Cir. 2004) (in a Declaration of Taking Act case, "[t]itle and the right to possession vest in the government immediately upon the filing of a declaration and the requisite deposit.").

<sup>4</sup> Dkt. No. 11.

<sup>5</sup> Dkt. No. 13.

<sup>6</sup> Dkt. No. 14.

<sup>7</sup> Dkt. No. 15.

<sup>8</sup> Dkt. No. 17.

<sup>9</sup> Dkt. No. 14.

in order to give time for the United States to review the amended expert report; to give time for the Parties to designate rebuttal experts and depose expert witnesses, if needed; and to allow the Parties additional time to be used toward further settlement negotiations.

**Request to Modify Scheduling Order Deadlines**

9. This is a federal land condemnation action seeking to acquire property in order “to construct, install, operate, and maintain roads, fencing, vehicle barriers, security lighting, cameras, sensors, and related structures designed to help secure the United States/Mexico border within the State of Texas.”<sup>10</sup>
10. On January 20, 2021, President Joseph R. Biden executed a Presidential Proclamation, terminating the national emergency at the Southern Border Wall and directing “a careful review of all resources appropriated or redirected to construct a southern border wall” through the development of “a plan for the redirection of funds concerning the southern border wall.”<sup>11</sup>
11. The plan for the redirection of funds concerning the southern border wall was expected to be developed within 60 days from the date of the proclamation (approximately March 22, 2021), however the United States continues to await guidance from the new administration.<sup>12</sup>
12. As aforementioned, the Parties have already designated expert witnesses and exchanged expert reports in compliance with the Court’s January 14, 2021 Order.<sup>13</sup>

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<sup>10</sup> Dkt. No. 2, Schedule B.

<sup>11</sup> Pres. Proc. No. 10142, 86 Fed. Reg. 7225 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-termination-of-emergency-with-respect-to-southern-border-of-united-states-and-redirection-of-funds-diverted-to-border-wall-construction/>.

<sup>12</sup> *Id.*

<sup>13</sup> Dkt. No. 17.

However, Defendant has stated that it is in the process of amending its expert report. Further, the United States has yet to receive guidance on how it will be allowed to proceed based on the aforementioned Presidential Proclamation.

13. The Parties have discussed mediation as a settlement tool to be used in this case and have agreed to mediate the case if the Court will graciously extend the deadlines as prayed for herein. The Parties believe that mediation will help facilitate a settlement of this case.

14. Therefore, in order to give time for the United States to review the amended expert report, and allow Parties to designate rebuttal experts and depose expert witnesses, the Parties are seeking to modify the discovery deadline and all remaining deadlines in the Amended Scheduling Order.<sup>14</sup>

### **PRAYER**

The Parties respectfully request the Court enter an Order to modify the discovery deadlines and all remaining deadlines in the Amended Scheduling Order<sup>15</sup> in this action for at least ninety (90) days to provide the Parties with an opportunity to resolve this matter without the need for trial.

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<sup>14</sup> Dkt. No. 14.

<sup>15</sup> Dkt. No. 14.

Respectfully submitted,

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With Permission

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**CERTIFICATE OF SERVICE**

I, Manuel Muniz Lorenzi, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on April 5-8, 2021, a copy of the foregoing was electronically filed on the CM/ECF system, which will automatically serve a Notice of Electronic Filing on counsel of record and a copy of the foregoing document will be served to other parties by regular mail.

By: s/Manuel Muniz Lorenzi  
**MANUEL MUNIZ LORENZI**